CF0000061364

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (MP)

CRIMINAL APPEAL NO. 2026 OF 1997 Division Bench (Criminal)

APPELLANT(in jail) : Girdhar Das alias Dhirdha Das son of Samaroo alias Vikram Sahu aged about 28years resident of village Bhalapur, P.S. Mohla, district Rajnandgaon (MP).

VERSUS

13061

RESPONDENT : The State of M.P. through the Station House Officer, Mohla, dist. Rajnandgaon (MP).

J - 12-9-97
Shri S.K. Verma Advocate

CONVICTION	SENTENCE
i. Under section 324 of the IPC.	i. R.I. for 2years and fine of Rs.500. In default of payment of fine S.I. for a term of 3months.
ii. Under section 302 of the IPC	ii. R.I. for life and fine of Rs.1000/=. In default of payment offine S.I. for a term of 3months. Both sentences to run concurrently.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE

(28)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

DIVISION BENCH*: -

HON'BLE SHRI L.C. BHADOO

& HON'BLE SHRI D.R. DESHMUKH, JJ.

Criminal Appeal No.2026 of 1997

Girdhar Das alias Dhirdha Das

- Versus -

State of M.P. (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C. BHADOO
Judge
22-6-2005

HON'BLE SHRI D.R. DESHMUKH, J. I agree

Sd/-
Dilip Raosaheb Deshmukh
Judge
23-6-2005

POST FOR JUDGMENT ON 24th JUNE, 2005

Sd/-
L.C. BHADOO
Judge

(29)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

DIVISION BENCH*: -

HON'BLE SHRI L.C. BHADOO

& HON'BLE SHRI D.R. DESHMUKH, JJ.

Criminal Appeal No.2026 of 1997

Girdhar Das alias Dhirdha Das

- Versus -

State of M.P. (now Chhattisgarh)

Present: -

Shri R.K. Jain, Advocate:	For the appellant.
Shri U.N.S. Deo, Public Prosecutor with Shri Akhil Mishra, Panel Lawyer:	For the State/respondent.

JUDGMENT

(Delivered on 24th June, 2005)

The following judgment of the Court was delivered by *L.C. Bhadoo, J.* -

The accused/appellant has preferred this criminal appeal being aggrieved by the judgment of conviction and sentence dated 29th August 1997 passed by the 1st Additional Sessions Judge, Rajnandgaon in S.T. No.29/97 whereby learned 1st Additional Sessions Judge, Rajnandgaon after holding the accused/appellant guilty for the commission of the offence under Section 302 of the I.P.C. for committing the murder of Rikhi Bai, sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo S.I. for 3 months. He also held the accused/appellant guilty for the commission of the offence under Section 324 of the I.P.C. for voluntarily causing simple injury by sharp edged weapon

to Janki Bai and sentenced him to undergo R.I. for 2 years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo S.I. for 3 months. Learned 1st Additional Sessions Judge also directed that both the above sentences should run concurrently.

(2) Briefly stated prosecution case is that on 1-9-96 at about 11 am when deceased Rikhi Bai and Janki Bai were returning from the agricultural field carrying with them bundles of grass for the purpose of feeding the cattle, on the way the accused/appellant appeared in front of them and asked Rikhi Bai to accompany him. On refusal by Rikhi Bai, he started attacking Rikhi Bai with a knife. When Janki Bai tried to intervene in order to rescue Rikhi Bai, the accused/appellant also attacked Janki Bai with a knife, as a result of which she received injury on the thumb of the right hand. In the process, the accused/appellant assaulted with a knife on the neck, head and hand of Rikhi Bai. Janki Bai rushed to the village and informed about the incident to mother Ankleheenbai, Bodhan, Bihari and others and informed that the accused/appellant is attacking Rikhi Bai near Neem tree. On receiving this information, when these persons went near Neem tree, they saw that Rikhi Bai was lying on the ground. One portion of her neck was found cut and she died on account of injuries. The injuries were also present on the hand of Rikhi Bai. Janki and Bodhanram went to the Police Station Mohala at about 3 pm and lodged the F.I.R. Ex.-P/2. On the basis of merg intimation (Ex.-P/3) given by Bodhanram, F.I.R. (Ex.-P/2) was registered at Crime No.45/96 for the commission of the offence under Section 302 of the I.P.C..

(3) After registering the case, the Investigating Officer reached to the site and prepared the site plan Ex.-P/1 in the presence of Biharilal Patel and Janki Bai. Vide Ex.-P/4 the Investigating Officer took into possession the thumb portion which was cut and separated from the hand on account of the knife injury caused by the accused to Rikhi Bai. After giving notice Ex.-P/5 to the Panchas, prepared the Panchanama of the dead body of Rikhi Bai Ex.-P/6. Vide Ex.-P/7 the Investigating Officer took into possession the string of

beads from the scene of occurrence. He also took into possession the blood stained soil and plain soil under Ex.-P/8 from the scene of occurrence. The dead body of Rikhi Bai was sent for postmortem examination vide Ex.-P/9-A to the Primary Health Centre, Mohala where Dr. S.R. Mandavi (PW-8) conducted the postmortem on the dead body of Rikhi Bai and prepared the postmortem report in which he noticed as many as 11 injuries mentioned in the postmortem report. Except injury No.11, all the injuries were incised wounds. Thumb of left hand was amputated from proximal phalanges. One incised wound was present in the middle finger of left hand. One incised wound was also present on the left shoulder joint obliquely. One incised wound was present on the left cheek to the left ear spindle shaped obliquely, as a result of which ear was torn in two parts. Another incised wound was present on left cheek to back of head over occipital bone and it also torn ear in two parts. Injury No.8 was in the nature of incised wound on lateral aspect of neck to back of neck in the size of 5"x2"x4" and great vein of neck was cut by this wound. Third and Fourth cervical vertebra were found fractured. Other incised wound was on right forearm in the size of ½"x1/2"x1mm and there was abrasion on the right shoulder. In the opinion of the doctor, the cause of death of Rikhi Bai was shock due to excessive haemorrhage and fracture of 3rd and 4th cervical vertebra. The doctor also examined separated piece of thumb vide Ex.-P/10-A. He also examined injuries of Janki Bai and prepared the report Ex.-P/11-A. He noticed one incised wound on the right palm in the size of 1"x1cmx1cm. Clotted blood was found around wound. The knife was also examined by the doctor and he prepared the report Ex.-P/12-A whereby he gave his opinion that the injuries on the body of the deceased could be caused by the said knife. He also examined full pant of the accused which was found stained with blood like material. He also examined Sando Baniyan which was stained with blood like material. On the basis of memorandum Ex.-P/17 given by the accused the Investigating Officer recovered the knife Article 'A' under Ex.-P/18 at the instance of the accused.

(4) After completion of the investigation, charge sheet was filed against the accused/appellant before the Court of Judicial Magistrate Ambagarh who in turn committed the case to the Sessions Judge, Rajnandgaon from where learned 1st Additional Sessions Judge, Rajnandgaon received the case on transfer. The prosecution in order to prove the charge against the accused/appellant produced 12 witnesses. The Additional Sessions Judge also examined the accused under Section 313 of the Cr.P.C. in which he denied his involvement in the crime and stated that the witnesses are false, he is innocent and he has been falsely implicated in the crime. After hearing the arguments of Additional Public Prosecutor and counsel for the accused, learned Additional Sessions Judge convicted and sentenced the accused in the manner mentioned in the earlier part of this judgment.

(5) We have heard Mr. R.K. Jain, counsel for the accused/appellant as also Mr. U.N.S. Deo, Public Prosecutor and Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

(6) As far as the nature of death of deceased Rikhi Bai being homicidal is concerned, the same has not been disputed by counsel for the accused/appellant. Dr. S.R. Mandavi (PW-8), who conducted the postmortem on the dead body of Rikhi Bai, has clearly stated that he noticed as many as 11 injuries on the body of the deceased and due to injury on the neck great vein was found cut. Third and Fourth cervical vertebra was found fractured and the cause of death of the deceased was shock due to excessive haemorrhage and fracture of third and fourth cervical vertebra. The nature of death was homicidal and the injuries were ante-mortem in nature. Apart from that, PW-1 Janki Bai, who was eyewitness to the incident, has clearly stated that the injuries were inflicted by the accused/appellant with a knife, therefore, in view of the above evidence, it stands proved that the nature of death of Rikhi Bai was homicidal.

(7) Now, coming to the question of involvement of the accused/appellant in committing the crime in question, learned counsel for the

accused/appellant while referring the evidence of Janki Bai argued that in view of the evidence of this witness in the cross-examination, after receiving the injuries, she fell down and her eyes were closed, therefore, she could not have witnessed the assault by the accused. While pointing out the evidence of this witness, he argued that in view of the above evidence of this witness, she cannot be treated as eyewitness.

(8) On the other hand, Mr. Akhil Mishra argued that Janki Bai is an injured witness who herself received injuries caused by the accused, therefore, it cannot be said that she had not witnessed the crime.

(9) Having heard learned counsel for the parties, we have carefully gone through the evidence of this witness. In the examination-in-chief, this witness has categorically stated that at about 9-10 am in the morning on the fateful day she along with Rikhi Bai were returning from the agricultural field after collecting the grass from the field for the purpose of feeding the cattle. Near Neem tree the accused/appellant came in front of them and asked Rikhi Bai to accompany him, but Rikhi Bai did not agree on which the accused started attacking Rikhi Bai with a knife. She tried to rescue Rikhi Bai and asked the accused why he is attacking Rikhi Bai, on which the accused also assaulted her with a knife on the right hand, as a result of which she received injury on the right hand and blood started oozing out of the injury. The accused assaulted Rikhi Bai with a knife but she could not see the place of injury. Rikhi Bai was protecting herself with the help of her hands. Thereafter, she left the scene of occurrence and came in the vicinity and informed the mother of the deceased namely, Ankleheenbai about the incident and thereafter, she also informed Bodhan and Bihari. Thereafter, all of them left for the scene of occurrence where they saw the dead body of Rikhi Bai and from there she along with Bodhan went to the police station and lodged the report. The police prepared the site plan Ex.-P/1. It is true that in the cross-examination she has stated that due to the assault on her, her

eyes were closed and she fell down, thereafter she could not see the accused and Rikhi Bai as to where they went.

(10) On the basis of this isolated piece of evidence, after examining whole evidence of this witness along with other evidence available on record, it cannot be said that she had not witnessed the crime. It may be true that on account of receiving the injury she fell down and her eyes were closed, but merely on account of that her presence on the spot cannot be doubted for the reason that she herself received injuries of the knife caused by none else than the accused/appellant, therefore, she falls under the category of injured witness. This witness has categorically stated that when the accused started attacking Rikhi Bai, then she tried to rescue her on which the accused attacked this witness. Moreover, her presence and witnessing the incident stands corroborated by the evidence of Ankleheen Bai, Bodhan and Biharilal to whom she informed and they along with this witness came back to the scene of occurrence where they saw Rikhi bai was lying dead. Thereafter, this witness along with Bodhan Ram went to the Police Station Mohala and lodged the report Ex.-P/3. Witness Bodhan Ram has been examined as PW-4 who has corroborated the evidence of this witness. The fact that the accused asked Rikhi Bai to accompany him in the presence of this witness finds support from the previous conduct of the accused and to prove the previous conduct of the accused the prosecution has adduced the evidence of PW-2 Mamta aged about 11 years and she has categorically stated that before the incident the accused gave her a letter to be handed over to Rikhi Bai. She handed over that letter to Rikhi Bai and informed that Girdhar has given this letter. The evidence of this witness proved the fact that the accused/appellant was following the deceased namely, Rikhi Bai and wanted to keep her in his house as his wife. This fact further finds support from the evidence of PW-3 Radha Bai who has stated that 8-15 days before the date of the incident Rikhi Bai informed her that the accused wants to take her at his residence, but she does not want to go to the house of the accused, even if it is offered

to her by her parents to send her with a handicapped person but she will not go to the house of the accused. She disclosed this fact to her because at that time they saw the accused on the way and on seeing the accused, Rikhi Bai rushed into the house of this witness. 15 days thereafter she saw that Janki Bai was coming crying that accused Girdhar has murdered Rikhi Bai.

(11) PW-4 Bodhan Ram has stated that Janki Bai informed about the incident to him and other persons and they went to the scene of occurrence and saw the dead body of Rikhi Bai and on that he lodged the report Ex.-P/2 at the Police Station Mohala which bears his signatures. The father of Rikhi Bai PW-5 Chanderlal has also proved the conduct of the accused and he has given the evidence to the effect that once his wife informed him that the accused gave a letter to Rikhi Bai which has been torn out by Rikhi Bai. On this, he went to the village Patel Biharilal and Panch Dwarika and complained against the conduct of the accused. Sarpanch, Kotwar and other persons convened a meeting in which the accused appeared and admitted about giving letter to Rikhi Bai and Panchayat advised to the accused not to do such thing in future. PW-7 Biharilal has stated that on the fateful day he heard the cries and Janki Bai informed about the incident and he saw the injury on the right thumb of Janki Bai. He along with other persons went to the scene of occurrence and saw the dead body of Rikhi Bai. Therefore, in view of the above evidence and looking to the previous conduct of the accused with Rikhi Bai as he was interested in keeping Rikhi Bai in his house and he was regularly following Rikhi Bai and in that connection, he sent a letter also, therefore, looking to this evidence also, the evidence of Janki Bai regarding witnessing the crime cannot be disbelieved. On careful consideration of whole evidence, we are of the considered opinion that the evidence given by Janki Bai inspires confidence of the Court and the evidence of Janki Bai is natural and trustworthy. Even the knife was recovered at the instance of the accused under Ex.-P/18 based on the memorandum given by the accused Ex.-P/17 which has been proved by the Investigating Officer. There is simple denial of

the accused. Therefore, we do not find any illegality and infirmity in the finding of conviction recorded by learned trial Court as the same is based on legal evidence. Further we do not find any reason to differ from the view taken by the trial Court.

(12) Now, coming to the question of nature of the crime, we are of the considered opinion that the accused assaulted repeatedly with a knife on the vital part of the body, as a result of which third and fourth cervical vertebra was fractured and great vein of the neck from the left side was cut. The accused caused 11 injuries one after another in a quick succession with a deadly weapon which is suggestive of the intention of the accused and the same were caused by him as Rikhi Bai was not agreeing to remain with the accused as his wife. It can safely be inferred from the facts and evidence available on record that the accused was regularly following the deceased and when he reached to the conclusion that Rikhi Bai is not acceding his request, he decided to finish Rikhi Bai. As per para-7 of the evidence of Janki Bai, the accused was already married and he had two children, even then the accused wanted that Rikhi Bai should remain with him as his wife. Therefore, finding of the trial Court that the act of the accused was intentional finds support from the fact that when Rikhi Bai refused to go with accused Girdhar, he was regularly following and persuading Rikhi Bai for the same and it appears that he committed the heinous crime of murder out of frustration.

(13) In the result, we do not find any substance in this appeal, the same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Barve